

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

MICHAEL D. WOLFENBARGER, on behalf of himself and all others similarly situated,)	Case No.:
)	
Plaintiff,)	
)	
vs.)	CLASS ACTION COMPLAINT
)	
VOLKSWAGEN AG, VOLKSWAGEN GROUP OF AMERICA, INC., AUDI OF AMERICA, MARTIN WINTERKORN, HERBERT DIESS, MICHAEL HORN, JAN BURES, MARK MCNABB, JONATHAN BROWNING and SCOTT KEOGH,)	DEMAND FOR JURY TRIAL
)	
Defendants.)	

COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

INTRODUCTION

1. Plaintiff Michael D. Wolfenbarger ("Plaintiff"), by and through his legal counsel, files this federal securities class action on behalf of himself and all individuals or entities that purchased shares of the ordinary and preferred American Depositary Receipts ("ADRs") of Volkswagen AG ("Volkswagen" or the "Company") between November 19, 2010 and September 21, 2015, inclusive (the "Class Period"). This action makes allegations that Volkswagen and certain of its officers and/or directors violated §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§78j(b) and 78t(a), and U.S. Securities and Exchange Commission ("SEC") Rule 10b-5, 17 C.F.R. §240.10b-5, and seeks to recover the resultant damages. Plaintiff makes these allegations based on personal knowledge, investigation of counsel, review of public statements and other publicly-filed documents.

2. Volkswagen is one of the world's leading automobile manufacturers and the largest automaker in Europe. In 2014, Volkswagen sold over ten million cars, representing

approximately 13% of the global passenger car market. The Company owns and markets 12 brands: Volkswagen passenger cars, Audi, SEAT, SKODA, Bentley, Bugatti, Lamborghini, Porsche, Ducati, Volkswagen commercial vehicles, Scania and MAN. Headquartered in Wolfsburg, Germany, Volkswagen sells vehicles in 153 countries and operates 31 production plants throughout the world. Volkswagen conducts business in the U.S. through its wholly owned U.S. subsidiary, Volkswagen Group of America, Inc. ("Volkswagen America"), a New Jersey corporation having its principal place of business in Herndon, Virginia. The Company's only North American production plant is a sprawling 1,400 acre facility located in Chattanooga, Tennessee.

3. Throughout the Class Period, defendants issued numerous deliberately false and misleading statements and material omissions to investors concerning the business prospects and financial success of Volkswagen's line of Turbo Diesel ("TDI") or "clean diesel" vehicles. Specifically, defendants misled investors by touting the Company's "clean diesel" vehicles as high-performing and fuel efficient, while at the same time being environmentally-friendly by virtue of their low emissions. Defendants failed to disclose the truth, however, that Volkswagen's "clean diesel" vehicles only achieved such results through widespread use of software used to evade emissions testing (the "Defeat Device"). Volkswagen installed the Defeat Device in the vehicles so that the vehicles would pass emissions tests required by federal and state laws while undergoing emissions testing, but be turned off while otherwise being operated. Volkswagen intentionally designed the Defeat Device for the express purpose of deceiving State and Federal regulators, including the Environmental Protection Agency ("EPA") and consumers, allowing the Company to continue and market and sell its popular line of "clean diesel" vehicles to an unsuspecting public. As a result of defendants' scheme and false and misleading statements and omissions, Volkswagen's ordinary and preferred ADRs traded at

artificially inflated prices during the Class Period, reaching highs of \$54.82 and \$56.55 per ADR, respectively, on December 30, 2013.

4. Defendants' fraud came to light beginning on September 18, 2015. That day, the EPA issued a Notice of Violation ("NOV") informing the public that several lines of Volkswagen and Audi diesel vehicles sold in the United States were sold with the aforementioned "defeat devices" that could "bypass, defeat, or render inoperative elements of the vehicles' emission control systems that exist to comply" with federal and state emissions standards. The NOV described how the "defeat devices" could activate the full emissions controls during testing, but deactivate them while otherwise being operated, meaning that the vehicle was emitting anywhere from 5 to 40 times the nitrogen oxide ("NOx") emission limits established by regulation.

5. Over the next few days after the Notice of Violation, greater details emerged regarding defendants' wrongdoing, including a public admission by the Company about the "defeat devices," a recall ordered by U.S. regulators involving Volkswagen and Audi model year 2009-2015 TDI vehicles containing four-cylinder, 2.0 liter diesel engines, and speculation about fines and penalties facing Volkswagen that could amount to as much as \$18 billion.

6. News of the defendants' fraud caused Volkswagen's share price to plummet, with the price of Volkswagen's ordinary ADRs declining over 33%, from a close of \$38.03 per share on September 17, 2015 to \$25.44 per share on September 22, 2015, and Volkswagen's preferred ADRs declining from a close of \$38.05 per share on September 17, 2015 to a close of \$23.98 per share on September 22, 2015.

7. As a result of defendants' material misrepresentations and omissions, and the precipitous decline in Volkswagen's market value, the Company's ADR investors have suffered substantial losses and damages for which this cause of action seeks a recovery.

JURISDICTION AND VENUE

8. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5, 17 C.F.R. §240.10b-5, promulgated thereunder by the SEC. Therefore, this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and §27 of the Exchange Act, 15 U.S.C. §78aa.

9. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act, as the defendants transact business in this District, and Volkswagen's only North American Manufacturing Plant is located in this District.

10. In connection with the acts, conduct and other wrongs alleged in this Complaint, defendants directly or indirectly used the means and instrumentalities of interstate commerce, including, but not limited to, the U.S. mail, interstate telephone communications and the facilities of a national securities exchange.

PARTIES

11. Plaintiff, Michael D. Wolfenbarger, purchased Volkswagen ADRs at artificially inflated prices during the Class Period, as described in the attached certification, and suffered an economic loss when the relevant truth was disclosed and the ADR prices declined.

12. Defendant Volkswagen is one of the world's leading automobile manufacturers and the largest automaker in Europe. In 2014, Volkswagen sold over ten million cars, representing approximately 13% of the global passenger car market. The Company owns and markets 12 brands: Volkswagen passenger cars, Audi, SEAT, SKODA, Bentley, Bugatti, Lamborghini, Porsche, Ducati, Volkswagen commercial vehicles, Scania and MAN. Headquartered in Wolfsburg, Germany, Volkswagen sells vehicles in 153 countries and operates 31 production plants throughout the world. The Company's only North American production plant is a sprawling 1,400 acre facility located in Chattanooga, Tennessee.

13. Defendant Volkswagen America, Volkswagen's wholly owned U.S. subsidiary, is a corporation doing business in all 50 states and the District of Columbia and is organized under the laws of the State of New Jersey, with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171.

14. Defendant Audi of America ("Audi"), a wholly owned subsidiary of Volkswagen, is a corporation doing business in all 50 states and the District of Columbia and is organized under the laws of the State of New Jersey, having its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171.

15. Defendant Martin Winterkorn ("Winterkorn") served as Chief Executive Officer ("CEO") of Volkswagen and Chairman of the Board of Management of Volkswagen until his resignation on September 23, 2015. Winterkorn also served as Chairman of the Supervisory Board of Audi AG and Chairman of the Board of Management of Porsche Automobile Holding SE. Winterkorn became head of Group Quality Assurance at Volkswagen in 1993 and was appointed General Manager of Volkswagen in March 1994. He was additionally responsible for the VW Group Product Management from June 1995. In January 1996, Winterkorn took over from Herbert Schuster as Member of the Brand Board of Management for Technical Development for the Volkswagen brand. From July 2000, he was Member of the VW Group Board of Management for Technical Development.

16. Defendant Herbert Diess ("Diess") is a Member of the Board of Management of Volkswagen and currently serves as Chairman of the Board of Management of the Volkswagen passenger cars brand.

17. Defendant Michael Horn ("Horn") is the President and CEO of Volkswagen America, a role he has served since January 2014. Horn joined Volkswagen America after 23 years with Volkswagen. Horn was previously Global Head of After Sales at Volkswagen and

Volkswagen America.

18. Defendant Jan Bures ("Bures") is the Executive Vice President for Group After Sales & Service at Volkswagen America, and in that role reports directly to defendant Horn. Bures is responsible for steering the group after-sales strategy, delivery of Volkswagen America parts turnover and profit, parts logistics, wholesale parts operations, contract centers and roadside assistance.

19. Defendant Mark McNabb ("McNabb") is Chief Operating Officer of Volkswagen America, and in that role reports directly to defendant Horn. McNabb is responsible for the management of sales, after sales and customer experience for the Volkswagen brand.

20. Defendant Jonathan Browning ("Browning") served as CEO of Volkswagen America from October 2010 until December 2013. Browning joined Volkswagen in June 2010, directing the Company's National Sales Companies.

21. Defendant Scott Keogh ("Keogh") is President of Audi of America, a role he assumed in June 2012 after serving as Chief Marketing Officer, and is in charge of all U.S. activities of Audi.

22. Defendants Winterkorn, Diess, Horn, Bures, McNabb, Browning and Keogh are collectively referred to herein as the "Individual Defendants." As officers and/or directors and controlling persons of Volkswagen, Volkswagen America and/or Audi, each of the Individual Defendants had a duty to: (1) promptly disseminate accurate and truthful information regarding the Company's financial condition, performance, growth, operations, financial statements, business, markets, management, earnings and present and future business prospects; and to (2) correct any previously issued statements that had become materially misleading or untrue so that the market price of the Company's stock would be based upon truthful and accurate information. The Individual Defendants violated these specific requirements and obligations by participating

in a scheme to defraud Volkswagen's investors and the public at large.

23. The Individual Defendants, as officers and/or directors of Volkswagen, participated in the drafting, preparation and/or approval of the various public statements and other communications complained of herein, were aware of or recklessly disregarded the misstatements contained therein and omissions therefrom and were aware of their materially false and misleading nature. Due to their Board membership and/or executive positions with Volkswagen, Volkswagen America and/or Audi, each of the Individual Defendants had access to the confidential, proprietary and material adverse non-public information about Volkswagen as particularized herein and knew or recklessly disregarded that these adverse facts rendered the representations made by or about Volkswagen (or adopted by the Company) materially false and misleading.

24. The Individual Defendants, owing to their positions of control and authority as officers and/or directors of Volkswagen, Volkswagen America and/or Audi, could and did control the content of the various filings and other public statements pertaining to the Company during the Class Period. Each Individual Defendant was provided with copies of documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected.

25. Accordingly, each of the Individual Defendants are "controlling persons" within the meaning of §20 of the Exchange Act, as they are responsible for the accuracy of the public reports and releases detailed herein and/or participated in a scheme to defraud. The Individual Defendants are therefore primarily liable for the conduct alleged herein.

BACKGROUND

A. Volkswagen's Securities: American Depositary Receipt (ADR)

26. An American Depositary Receipt ("ADR") is a U.S. dollar denominated form of equity ownership in a non-U.S. company. It represents the foreign shares of a company held on deposit by a custodian bank in the company's home country and carries the corporate and economic rights of the foreign shares, subject to the terms specified on the ADR certificate.

27. Volkswagen's two sponsored ADR programs (preferred and ordinary shares) are sponsored by J.P. Morgan and trade in the United States on the over-the-counter ("OTC") market. Volkswagen preferred ADRs trade under the symbol "VLKPY," and the Volkswagen ordinary ADRs trade under the symbol "VLKAY."

B. Volkswagen Long Touted Its Diesel Vehicles as Being Fuel Efficient and Environmentally-Friendly

28. During the last decade, Volkswagen set a goal of becoming "an economic and environmental leader in the global automotive industry." At the end of 2008, Volkswagen announced plans to sell one million Volkswagens and Audis by 2018. These statements coincided with the Company's introduction of TDI clean diesel technology in the United States, which it touted in accompanying press release as "proof of [Volkswagen's] commitment to provide customers an alternative in their purchase of fuel efficient, clean emissions vehicles that are also fun to drive." By 2011, numerous publications described how Volkswagen then set its sights on becoming the largest automaker in the world by 2018. According to Automotive News Europe, "a central part of its plan to get there is the goal of boosting core-brand sales in the United States."

29. An important part of Volkswagen's sales and marketing efforts in the United States involved the promotion of its diesel vehicles as low-emission, fuel-efficient cars that

achieved performance comparable with gasoline vehicles. Defendant Barnes in June 2009 remarked that “U.S. consumers are starting to realize the many benefits of today’s clean diesels—vehicles that attain more than 30 percent better fuel economy while emitting 25 percent less greenhouse gas emission—all without sacrificing driving dynamics.” Volkswagen's marketing campaign was successful: the Company sold 43,869 “clean diesel” vehicles in 2009, but that number nearly tripled to 111,285 in 2013. Volkswagen would become the largest seller of diesel passenger vehicles in the United States.

30. Volkswagen actively promoted its diesel vehicles as both “clean” and “green,” labeling its vehicles as “Clean Diesel.” Indeed, on the “Environment” page of Volkswagen America's website, the Company states that it takes “environmental responsibility very seriously. When it comes to making our cars as green as possible, Volkswagen has an integrated strategy focused on reducing fuel consumption and emissions, building the world's cleanest diesel engines and developing totally new power systems, which utilize new fuel alternatives.” In 2013, Volkswagen advertised its TDI Clean Diesel technology as having “lower CO2 emissions compared to 93% of other vehicles,” and “boast[ing] 30% better fuel economy than comparable gas engines.” Volkswagen also claimed to have the most 2013 models that get over 40 mpg,” driven by the clean diesel technology that “lets you travel much farther between stops for fuel than with comparable gasoline engines.”

31. Volkswagen prominently promoted its Clean Diesel technology, claiming that it was designed to “meet the toughest emission standards”:

At Volkswagen Group, we are providing that clean diesel technologies are a practical and economically friendly bridge to the fuel alternatives of tomorrow. Clean Diesel TDI vehicles from Audi and Volkswagen Group are built on innovative turbo-charged direct-injection engine technologies for enhanced fuel economy. We combine that with the most advanced catalytic converter systems, designed to meet the toughest emission standards. Finally, we use ultra-low-sulfur clean diesel fuel. The result is the best of both worlds for people and the planet:

- More than 30% improvements in real-world fuel economy
- 25% reduction in CO₂ emissions
- 90% reduction in nitrous oxide emissions

According to the US Environmental Protection Agency (EPA), converting one-third of the cars on the road today to TDI Clean Diesel would save approximately 1.4 million barrels of oil a day. That's equal to the daily shipments from Saudi Arabia to the United States.

J.D. Power and Associates projects the new vehicle diesel market will triple in the coming years, reaching 15 percent of all sales by 2020 - saving 17 billion gallons of fuel over the fleet's useful life. At Volkswagen Group of America, we're miles ahead of the curve.

32. Defendants bolstered their environmental-impact contentions by trumpeting the accolades for their clean diesel line of vehicles. In 2007, Popular Mechanics lauded Volkswagen's clean diesel engines in an article titled, "2009 Volkswagen Jetta TDI Test Drive: Clean Diesel's 50 MPG Meets Prius-Humbling Thrust." The Audi A3 TDI and VW Jetta TDI were named the 2010 Green Car of the Year and the 2009 Green Car of the Year, respectively. Defendants also launched a "Think Blue" program, which they explained as part of their policy of being "more responsible on the road and more environmentally conscious- not just in our cars."

33. In addition, defendants supported and directed a website to promote the Company's "clean" diesel technology, www.clearlybetterdiesel.org, which says the technology reduces smog and "meets the highest standards in all 50 states, thanks to ultra-low sulfur diesel (ULSD) fuel and innovative engine technology that burns cleaner." On the "Environment" page of its website, Volkswagen states that it takes "environmental responsibility very seriously. When it comes to making our cars as green as possible, Volkswagen has an integrated strategy focused on reducing fuel consumption and emissions, building the world's cleanest diesel engines and developing totally new power systems, which utilize new fuel alternatives." This is

in line with its corporate parent's stated philosophy, which is touted as "producing clean cars in clean factories."

34. Volkswagen's marketing was successful. In 2013, the Company sold 95,823 Volkswagen diesel passenger vehicles in the United States, accounting for 23.5% of total sales and an increase of 6.1 % over its 2012 total of 90,294. Audi sold 10,076 diesel passenger vehicles in the United States, an increase of 40% over the 7,195 sold in 2012. Porsche sold 5,386 diesel passenger vehicles in the United States, a huge jump of 333% over the 2012 total of 1,618. By 2015, Volkswagen had acquired a 70% market share of U.S. diesel-powered vehicle sales.

35. In part due to its success in marketing its diesel vehicles, Volkswagen reached its ambitious goal three years early. In 2015, Volkswagen overtook Toyota to become the largest automaker in the world, with 5.04 million vehicles sold worldwide in the first half of 2015.

**MATERIALLY FALSE AND MISLEADING STATEMENTS
ISSUED BY DEFENDANTS DURING THE CLASS PERIOD**

36. Throughout the Class Period, defendants made numerous materially false and misleading statements and omissions to investors regarding the Company's operations and its business and financial results and outlook. The materially false and misleading statements and omissions made by defendants during the Class Period include the following.

37. On November 19, 2010, Volkswagen issued a press release entitled "Environmental Management Has a Long History at Volkswagen." In the press release, defendants stated:

For the 15th time in succession, the Volkswagen technical development environmental management system has been awarded DIN EN ISO 14001 certification. An "anniversary" brochure has been produced to mark the occasion. The brochure explains exactly how environmental protection became a core part of the product creation process at Volkswagen. The Volkswagen technical development environmental management system has today been awarded its latest DIN EN ISO 14001 certificate from TUV NORD. The ISO/TR 14062

certification first achieved in 2009 has also been renewed. The standard stipulates binding conditions for the integration of environmental aspects into product design and development.

"Volkswagen set itself the goal back in 1995 of achieving continuous improvements in the environmental compatibility of its products and production processes," said Gunter Damme, Head of Environment at Volkswagen. "The technical development environmental management system is the key to ensuring that each and every new Volkswagen is more environmentally friendly than its predecessor".

38. On January 4, 2011, Volkswagen America issued a press release entitled "Volkswagen of America Closes 2010 with Best Overall Year Sales Since 2003." In the press release, defendants stated:

... Volkswagen of America, Inc. today reported that December 2010 marked a 17 percent increase over prior year sales for the entire line of vehicles. In addition, 2010 achieved a 20 percent increase over 2009 total year sales. Increased sales Numbers resulted in best annual sales since 2003 and best December sales since 2005.

* * *

Volkswagen's impressive line-up of TDI Clean Diesels fared well again in December with Golf selling 56 percent of its models as TDI and the all-new Touareg selling 35 percent as TDI Overall, 22 percent of Volkswagen models were sold with TDI Clean Diesel engines.

39. On May 31, 2011, Volkswagen issued a press release entitled "U.S. Department of Transportation Secretary Ray LaHood views Clean Diesel engines as a key component of future technology for highway transportation in the USA." In the press release, defendants stated:

High-tech Clean Diesel engines from Volkswagen are a cornerstone in the environmentally-friendly renewal of individual mobility in the United States. US Secretary of Transportation Ray LaHood focused on this Tuesday last week in his welcoming speech at the opening ceremony for Volkswagen's new plant in Chattanooga, Tennessee.

U.S. Secretary of Transportation Ray LaHood emphasized that the USA finds itself in an era of transition towards a new form of mobility - and thanks to the innovative technologies of Volkswagen, clean diesel engines will play an important role in implementing a new powertrain strategy for the United States. "And that is not only because it is the right engine for environmental and climate protection in the USA. Clean diesel engines also make sense

economically, for both individuals and American companies. The Clean Diesel technology that is found in the new US Passat, for example, makes a genuine difference."

* * *

In April 2011, the diesel share of vehicles sold by Volkswagen of America was 24 percent. This means that nearly one in every four Volkswagen brand cars delivered in the USA has a fuel-efficient and clean TDI engine. The Volkswagen Group is the global market leader in diesel engine technology, and back in 2008 it was the first carmaker to offer diesel vehicles on the US market that conformed to the BIN-5 standard, the most stringent emissions legislation in the world. In America, the Volkswagen brand already offers four TDI clean diesel models, and the Audi brand offers two. This year, the new Passat TDI and the Beetle TDI will be added. Audi has announced that it will bring the TDI to the luxury class in the USA and offer TDI clean diesel engines in both the Audi A6 and Audi A8 in 2013.

Many experts consider these diesel engines to be the most advanced combustion engines of our times. They combine minimum fuel consumption and the lowest emissions with maximum power. Depending on the specific model, Clean Diesel technologies may include an SCR catalytic converter - which reduces nitrogen oxide emissions (NOx) by up to 90 percent - or a NOx storage catalytic converter and oxidation catalytic converter, particulate filter, exhaust gas recirculation (EGR) and intelligent interventions by the electronic engine management system.

40. On January 9, 2012, Volkswagen issued a press release entitled "Volkswagen Group delivers over 8 million vehicles for first time." In the press release, defendants stated:

In 2011, the Volkswagen Group clearly exceeded prior-year deliveries, selling over eight million vehicles for the first time in a twelve-month period. A total of 8.16 (2010: 7.14; +14.3 percent) million vehicles were handed over to customers. Developments on the global passenger car market during the same period were also positive; however growth only ran at 5.1 percent, and Europe's largest automaker was therefore able to expand its global market share. The Group brands also closed 2011 on a high note, delivering 650,000 (December 2010: 545,600; +19.1 percent) vehicles to customers in the month of December.

"All Group brands reported further gains under difficult conditions on volatile markets. This outstanding result is clearly a team achievement," the Group Board Member for Sales, Christian Klingler, said. "However, a very challenging year lies ahead. The risks on European markets in particular will multiply in 2012. In spite of this, the Volkswagen Group is well placed and well prepared to master the upcoming challenges and play a leading role on world markets." (Footnote omitted.)

41. On March 1, 2012, Volkswagen America issued a press release entitled "Volkswagen Reports 42.5 Percent Increase in February U.S. Sales." In the press release, defendants stated:

... Volkswagen of America, Inc. (VWoA) today reported 30,577 units sold in February, a 42.5 percent increase over prior year sales and best February since 1973.

"February's strong sales of 30,577 units and back-to-back record months reflects the increasing consumer confidence in the marketplace and strong interest for our products," said Jonathan Browning, President and CEO, Volkswagen Group of America, Inc. ***"With escalating fuel prices, we anticipate increased demand for our full-range of fuel efficient vehicles, particularly our TDI Clean Diesel models, to continue into the spring selling season."***

* * *

The 2012 Beetle sold 1,303 units. The TDI Clean Diesel Coupe was unveiled this month at the Chicago Auto Show; it will go on sale late summer 2012.

* * *

Volkswagen's high-mileage, clean diesel TDI models account for 21.3 percent of sales in February, a 54.6 percent increase versus the prior month.

42. On March 12, 2012, Volkswagen released its Annual Report for the year ended December 31, 2011 ("2011 Annual Report"). In the Company's 2011 Annual Report, defendants characterized 2011 as a "positive year" in part due to:

Growth in sales to customers outperformed that of the market as a whole, allowing us to further strengthen our global market share.

This positive performance is due above all to our attractive and environmentally friendly model portfolio, which excites customers around the globe. In addition, our high quality and efficiency standards helped us meet and even exceed our financial targets.

43. The Company's 2011 Annual Report also asserted the following:

As one of the largest mobility groups in the world, we take responsibility. For our customers and employees. For our locations and society. ***And for the environment.***

44. The 2011 Annual Report also represented the following regarding social responsibility:

Our corporate policy is designed so that core economic processes are strategically tied to environmental and social concerns. [corporate social responsibility] involves voluntarily taking social responsibility at a level beyond mere compliance with legal requirements. *The Volkswagen Group's integrated [corporate social responsibility] concept is aimed at avoiding risks, identifying opportunities for development early on and improving the Group's reputation.*

45. On October 2, 2012, Volkswagen America issued a press release entitled "Volkswagen Reports a 34.4 Percent Sales Increase in September." In the press release, defendants stated:

Volkswagen of America, Inc. (VWoA) today reported 36,339 units sold in September, a 34.4 percent increase over prior year sales, a 37.2 percent increase year-to-date and the best September since 1972. "Tracking over a 3 7 percent increase year-to-date is a strong proof point that *our products are on more shopping lists and gaining acceptance in the market,*" said Jonathan Browning, President and CEO, Volkswagen Group of America, Inc., *"As we enter the fourth quarter of the year, we expect to continue our pattern of outperforming the industry."*

* * *

The Beetle continues to gain momentum with 2,622 units sold. *The Beetle TDI, sold 167 units, further highlighting customer demand for Volkswagen's Clean Diesel TDI technology.*

46. On January 3, 2013, Volkswagen America issued a press release entitled "Volkswagen Reports 35.1% Percent Increase in 2012 U.S. Sales." In the press release, defendants stated:

... Volkswagen of America, Inc. (VWoA) today reported 438,133 units delivered in 2012, a 3 5 .1 percent increase over prior year sales. December deliveries totaled 44,005, up 35.4 percent over 2011, marking the best December since 1970.

"2012 marked another successful year of growth for Volkswagen of America," said Jonathan Browning, President and CEO, Volkswagen Group of America, Inc. *"The Volkswagen brand delivered another important step in our long term*

growth plan. 2012 marked the third consecutive year of significant double-digit growth rates and we more than doubled our volume of 2009. With the addition of the all-new Jetta Turbo Hybrid, Beetle Convertible and our strong dealer network, we expect to continue to outpace the industry in 2013."

* * *

Volkswagen's high-mileage, TDI® Clean Diesel models account/or 20.6 percent of sales in 2012 and 16.7 percent in December.

47. On March 1, 2013, Volkswagen America issued a press release entitled "Volkswagen Reports 30th Consecutive Month of Sales Growth." In the press release, defendants announced that Volkswagen America had "reported 31,456 units delivered in February [2013], a 2.9 percent increase over prior year sales and the best February since 1973." The press release also reported that ***"Volkswagen's high-mileage, clean diesel TDI models accounted for 22.4 percent of sales in February, a 10.9 percent increase over the prior year."***

48. On April 5, 2013, Volkswagen America issued a press release entitled "Volkswagen Spreads Diesel Gospel in Gotham." In the press release, defendants stated that "[a]s the tide of clean-diesel sales in the U.S. market slowly rises, Volkswagen executives are happy to talk about their company's seminal role in successfully reintroducing diesel-powered automobiles to the American-market mainstream." Defendants further stated that ***"Volkswagen has been the leader of the mass-market re-introduction of diesel power to the U.S. market, while sibling brand Audi has taken the lead in the luxury segment. . . . Diesel's fuel-efficiency advantage, as well as torque properties, make it an increasingly attractive choice for American consumers with a 'green' orientation who don't want hybrids or EVs."***

49. On December 20, 2013, Volkswagen America issued a press release entitled "It's Official: Volkswagen Group of America Has Sold More Than 100,000 TDI® Clean Diesel Vehicles in 2013." In the press release, defendants announced that Volkswagen "has sold 100,000 TDI® Clean Diesel vehicles from the Volkswagen and Audi brands this year. This is the

first time it has reached this milestone in a calendar year." The press release further stated that "Audi and Volkswagen pioneered TDI® Clean Diesel engines and, as a result, the Volkswagen Group of America is the current market leader in Clean Diesel. Today's Clean Diesel engines deliver more torque, better highway fuel consumption and reduced CO2 emissions compared with equivalent gasoline engines." Defendant McNabb was quoted in the press release, stating that "[s]elling more than 100,000 TDI Clean Diesel vehicles is a significant milestone for Volkswagen Group of America *We're excited to see the increasing numbers of customers able to enjoy the reliability, durability, fuel-efficiency and power of the clean diesel engine.*" Defendant Keogh was also quoted in the press release, stating that "[t]he past year has shown that American consumers clearly recognize the benefits of clean diesel TDI vehicles They understand now more than ever that this is a technology delivering real answers to society's concerns about fuel consumption and greenhouse gas emissions without compromises."

50. On January 3, 2014, Volkswagen America issued a press release entitled "Volkswagen Reports December 2013 and Year End Results." In the press release, defendants stated:

... Volkswagen of America, Inc. (VWoA) today reported 407,704 units delivered in 2013. December deliveries totaled 34,015.

Volkswagen's high-mileage, TDI® Clean Diesel models totaled 95,823 units for the year accounting for 23.5 percent of sales in 2013 and 17.8 percent in December. Since 2000, Volkswagen of America has delivered over 500,000 TDI® Clean Diesel vehicles.

"Volkswagen is now operating at a new plateau, delivering over 400,000 units for the second consecutive year in over 40 years," said Mark McNabb, chief operating officer, Volkswagen of America, Inc. "We look forward to 2014, with the introduction of the new Golf family, continued increased awareness and enthusiasm for the brand's core models and the strength of our TDI offerings, we are well positioned for our next phase of growth to come over the next few years."

The Chattanooga-built Volkswagen Passat continues to demonstrate its strong appeal in the market with 9,254 units sold in December and 109,652 for the year.

Clean Diesel TDI Passat sales were the best year on record with 34,963 vehicles delivered, accounting for 32 percent of sales of the year.

51. On March 14, 2013, Volkswagen released its Annual Report for the year ended December 31, 2012 ("2012 Annual Report"). The press release announcing the 2012 Annual Report asserted that:

[Volkswagen is] continuing to focus on offering new, integrated and sustainable mobility solutions. Volkswagen Leasing GmbH now has a portfolio of some 216,000 environmentally friendly vehicles. ***In addition, average CO2 emissions in all vehicle deliveries to fleet customers of Volkswagen Leasing have fallen by 12 percent in the past four years.***

52. The 2012 Annual Report disclosed the following regarding corporate governance:

The future of the Volkswagen Group depends on our ability to continually increase the Company's value. ***Strengthening the trust of our customers and investors is fundamental to this. Transparent and responsible corporate governance therefore takes the highest priority in our daily work.***

53. The 2012 Annual Report also stated the following:

Our outstanding team is dedicated to developing and manufacturing first-class automobiles that captivate customers around the world. The focus of our business is on ensuring responsibility and sustainability in respect of our employees, society and the environment along the entire value chain.

Sustainability requires a commitment to balancing economic, ecological and social dimensions. Our CSR concept is aimed at ensuring that we avoid risks at every step along the value chain, identify opportunities for development early on and improve our reputation. CSR therefore makes a necessary contribution to increasing the value of the Company and safeguarding it in the long term.

54. The 2012 Annual Report also disclosed:

Increasing CO2 and consumption regulations mean that the latest mobility technologies are required in all key markets worldwide.

The Volkswagen Group closely coordinates technology and product planning with its brands so as to avoid target breaches, which entail severe sanctions.

55. March 6, 2014, Volkswagen America issued a press release entitled "Volkswagen

Group of America Releases 2013 Corporate Social Responsibility Report." In the press release, defendant Horn stated that *"Volkswagen Group of America is united not only by our devotion to building quality vehicles, but also by our commitment to doing what's right for the environment, our communities and our employees."* The press release also stated that "[c]utting-edge technologies have enabled Volkswagen to progress toward carbon-neutral vehicles," including "TDI® clean diesel vehicles." In 2013, Volkswagen and Audi accounted for 75 percent of the U.S. market for clean diesel vehicle sales, enabling owners nationwide to achieve up to 30 percent improved fuel-economy compared to gasoline vehicles."

56. On May 16, 2014, Volkswagen issued a press release entitled "Volkswagen Group Receives World Environmental Center's 30th Anniversary Gold Medal Award for Sustainable Development in 2014." In the press release, defendants stated that Volkswagen was "deeply honored to be recognized by the World Environment Center for our endeavors to create a society where conservation and eco-mobility are truly standard practices, not the exception." The press release stated that "Volkswagen's holistic approach to sustainability instills eco-conscious behaviors in all aspects of its operations. This includes following a strong set of environmental principles when building cars - at every stage of a vehicle's lifecycle." The press release further stated that "Volkswagen Group offers the largest low-CO₂ fleet in the global market, with high- performing and efficient powertrain options, including TDi® Clean Diesel, Turbo Stratified Injection (TSI), hybrid, plug-in hybrid and electric."

57. On January 5, 2015, Volkswagen America issued a press release entitled "Volkswagen Reports December 2014 Sales and 2014 Year-End Results." In the press release, defendants stated:

... Volkswagen of America, Inc. (VWoA) today reported 34,058 units delivered in December, with 366,970 units delivered in 2014.

"In 2014 Volkswagen of America enhanced the lineup of German-engineered vehicles with an all-new, award-winning Golf family, a refreshed Jetta and most recently a refined Touareg," said Mark McNabb, chief operating officer, Volkswagen of America. "As we kick off 2015, we are encouraged that the vehicles have been well received by both the automotive press and our dealers."

* * *

Volkswagen's high-mileage, TDI® Clean Diesel models totaled 79,422 Units for the year, accounting for 21.6 percent of sales in 2014. In December, 5,348 units were sold, 15.7percent of sales.

58. On August 3, 2015, Volkswagen America issued a press release entitled "Volkswagen of America Reports July Sales Gain of 2.4 Percent Over July 2014." In the press release, defendants stated:

... Volkswagen of America, Inc. (VWoA) today reported sales of 31,300 units delivered in July 2015. The all-new Golf family of vehicles continued to find success in the market. In July, Golf family sales totaled 6,717 units and the 2015 Golf TDI® Clean Diesel earned yet another accolade: a new GUINNESS WORLD RECORDS® achievement for the "lowest fuel consumption - 48 U.S. contiguous States for a non hybrid car" with a remarkable 81.17 mpg.

"We are encouraged by the consistent sales growth for the Golf across all models within the family. The latest Guinness World Records achievement for the Golf TDI adds to the suite of accolades which also includes the 2015 North American Car of the Year and Motor Trend Car of the Year," said Mark McNabb, chief operating officer, Volkswagen of America.

59. Defendants' false statements and/or omissions of material fact described above concealed the true facts, which were known and/or disregarded by defendants but concealed from the investing public during the Class Period, and included the following:

(a) From 2008 to the present, Volkswagen TDI "Clean Diesel" Vehicles had a software Defeat Device installed that detected when the Vehicles were undergoing emissions testing. During emission testing, the Defeat Device activated pollution control devices installed in the Vehicles to enable the Vehicles to pass emission testing. When the Vehicles were otherwise operational, i.e., being driven normally and not undergoing emission testing, the Defeat Device did not activate pollution controls and, under normal driving conditions, allowed the Vehicles to emit pollution greatly exceeding U.S. standards.

(b) Defendants' statements regarding Volkswagen's past and future sales, income and

profitability were materially false and misleading because defendants failed to disclose that such sales, income and profitability were only achieved by misleading its customers, government regulators and investors regarding the operation, quality, performance and environmental impact of its vehicles using diesel engines, which contributed materially to such sales.

(c) Defendants' statements regarding "Clean Diesel," as well as their statements regarding Volkswagen's commitment to sustainability and environmental protection, were materially false and misleading because Volkswagen's diesel engines emitted far more pollutants than defendants had represented, and defendants concealed the environmental impact of the Company's diesel engines by intentionally manipulating such engines to prevent their misconduct from being detected.

(d) Volkswagen was the subject of regulatory investigations and breached provisions of the Clean Air Act and other applicable laws, and as such was exposed to the risk of suffering billions of dollars in damages from fines, penalties, judgments and reputational damage, among other things, if its unlawful misconduct were discovered.

THE TRUTH BEGINS TO BE EMERGE

60. The conduct alleged herein and the materially false and misleading statements and omissions made during the Class Period caused Volkswagen ordinary and preferred ADRs to trade at inflated prices of as high as \$54.82 and \$56.55 per ADR, respectively, during the Class Period and operated as a fraud or deceit on investors in the Company's ADRs.

61. Later, when the relevant truth began to be disclosed regarding defendants' conduct, the prices of Volkswagen's ADRs suffered significant declines as the artificial inflation began to come out of the prices.

62. On September 18, 2015, the EPA issued a Notice of Violation ("NoV") to Volkswagen detailing that the software produced and used in its vehicles that allowed the vehicles to pass emissions testing despite emitting far greater NOx than permitted by law was a "defeat device" as defined by the Clean Air Act, and the numerous violations of EPA laws and regulations that Volkswagen now faced as a result of using such a Defeat Device. The NoV stated that Volkswagen installed the Defeat Device, code named "dyno calibration," intentionally to make it appear as if the vehicles complied with U.S. emissions standards when, during normal

operation, the vehicles did not. Among the violations listed in the NoV, Volkswagen failed to disclose or describe the presence of the Defeat Device in its EPA applications for certificates of conformity, making the sale of the vehicles unlawful. The NoV indicated that at least seven “clean diesel” model vehicles contained the unlawful Defeat Device. Volkswagen sold nearly 500,000 of the Vehicles in the U.S. from 2008 to the present, and approximately 11 million worldwide.

63. On March 13, 2014, Volkswagen issued its Annual Report for the year ended December 31, 2010 (“2013 Annual Report”). The 2013 Annual Report stated the following, in pertinent part:

Compliance is a cornerstone of sustainable business – a view expressly shared by the Company’s management. Speaking to an audience of more than 5,000 at a management event in 2013, Chairman of the Board of Management of the Volkswagen Group, Prof. Dr. Martin Winterkorn, emphasized this point: “Operating a sustainable business means we continue to take the subject of compliance seriously. We do not break the law, or other rules and regulations! This applies to all of our brands and in all regions.”

64. On March 18, 2014, Volkswagen America issued a press release regarding its latest version of its TDI Clean Diesel engine. The press release stated the following in pertinent part:

Dearborn, Mich. (March 18, 2014) – Douglas Skorupski, Manager of Technical Strategy, Volkswagen of America, today presented the launch details of the company’s newest, most fuel-efficient, TDI® Clean Diesel engine, designated EA288.

“The Volkswagen Group is a leader in Clean Diesel technology,” said Skorupski. “With the introduction of the new EA288 engine, we are excited that our family of TDI Clean Diesel vehicles is continuing to improve and will be even cleaner and more fuel efficient and powerful. We’re excited to see the increasing numbers of customers able to enjoy the reliability, durability, fuel-efficiency and power of Clean Diesel engines.”

Ever since 1977, when Volkswagen first offered a diesel engine in the Rabbit, the company has sold more than one million cars and SUVs powered by these engines in the U.S. High-mileage, TDI® Clean Diesel Volkswagen models accounted for 24 percent of sales in 2013, the best result on record. ***The TDI models in the Audi and Volkswagen lineup deliver up to 30 percent better fuel economy and 12-30 percent lower carbon dioxide emissions than comparable gasoline engines.***

65. That same day, *The New York Times* published a front-page article entitled "U.S. Orders Major VW Recall Over Emissions Test Trickery" giving additional details about the scandal and a recall of affected "clean diesel" vehicles. The article reported that the Company had "illegally installed software in its diesel-power cars to evade standards for reducing smog" and that Volkswagen had "admitted to the use a so-called defeat device. The recall involves 4-cylinder Volkswagen and Audi vehicles from model years 2009-2015." The article stated that, according to the EPA, the recall was just "the opening salvo" of a broader inspection of Volkswagen's production practices. The article also reported that the DOJ had opened an investigation and that fines of as much as \$18 billion could be imposed as a result of defendants' misconduct.

66. In response to this news, the prices of Volkswagen's ADRs declined. The price of the ordinary ADRs fell 4.5% from a close of \$38.03 per share on September 17, 2015 to \$36.31 per share on September 18, 2015. The price of the preferred ADRs fell 4.2% from a close of \$38.05 per share on September 17, 2015 to \$36.47 per share on September 18, 2015.

67. On September 20, 2015, Volkswagen's CEO, Winterkorn, issued a statement regarding the EPA's findings of manipulations that violate American environmental standards" in Volkswagen diesel cars. Defendant Winterkorn admitted that Volkswagen had "broken the trust of our customers and the public" and had begun an external investigation regarding the misconduct. Volkswagen also ordered its U.S. dealerships to stop selling cars impacted by the investigation until further notice. Defendant Winterkorn's statement received substantial

coverage by the financial media.

68. In response to Defendant Winterkorn's statement, the prices of Volkswagen's ADRs declined again. The price of the ordinary ADRs fell 17% from a close of \$36.31 per share on September 18, 2015 to \$30.10 per share on September 21, 2015. The price of the preferred ADRs fell 18.4% from a close of \$36.47 per share on September 18, 2015 to \$29.77 per share on September 21, 2015.

69. On March 13, 2015, Volkswagen issued its Annual Report for the year ended December 31, 2014 ("2014 Annual Report"). The 2014 Annual Report stated the following, in pertinent part:

We are focusing in particular on the environmentally friendly orientation and profitability of our vehicle projects so that the Volkswagen Group has the right products for success even in more challenging economic conditions ... Our activities are primarily oriented on setting new ecological standards in the areas of vehicles, drivetrains and lightweight construction.

Thanks to its corporate culture, Volkswagen is better suited than almost any other company to combine a modern understanding of responsibility and sustainability with the traditional values of running a business to form an integrated [corporate social responsibility] approach.

70. On September 22, 2015, Volkswagen issued a press release that provided further details on the breadth of the Company's misconduct. The Company reported that "[f]urther internal investigations conducted to date have established that the relevant engine management software is also installed in other Volkswagen Group vehicles with diesel engines. . . . Discrepancies relate to vehicles with Type EA 189 engines, involving some eleven million vehicles worldwide." The Company also reported that it had set aside a provision of €6.5 billion [approximately \$7.3 billion] in the third quarter of 2015 related to the misconduct. This news was quickly reported by news outlets across the world, including an article in *The New York*

Times entitled "Volkswagen Says 11 Million Cars Worldwide Are Affected in Diesel Deception" and an article published by *CNNMoney* entitled "Volkswagen scandal widens: \$7.3 billion cost, 11 million cars." Defendant Horn also stated on this day that "[Volkswagen] was dishonest, with EPA, the California Air Resources Board, and had "totally screwed up."

71. On this news, the prices of Volkswagen's ADRs declined further. The price of the ordinary ADRs fell 15.5% from a close of \$30.10 per share on September 21, 2015 to \$25.44 per share on September 22, 2015. The price of the preferred ADRs fell 19.5% from a close of \$29.77 per share on September 21, 2015 to \$23.98 per share on September 22, 2015.

72. Given the timing and magnitude of these declines in the prices of Volkswagen's ADRs, this negates any inference that the losses suffered by plaintiff and other Class members were caused by changed market conditions, macroeconomic factors or Company-specific facts unrelated to defendants' fraudulent conduct.

73. Like other members of the Class of purchasers of Volkswagen ADRs who purchased at artificially inflated prices during the Class Period, plaintiff suffered an economic loss, *i.e.*, damages, when the prices of Volkswagen's ADRs declined, as set forth above.

APPLICABILITY OF THE PRESUMPTION OF RELIANCE:
FRAUD ON THE MARKET

74. A class wide presumption of reliance is appropriate in this action under the United States Supreme Court's holdings in *Affiliated Ute Citizens v. United States*, 406 U.S. 128 (1972) (with respect to material omissions), and *Basic Inc. v. Levinson*, 485 U.S.224, 226 (U.S. 1988)(with respect to materially false and misleading statements) because Plaintiff's fraud claims are grounded in defendants' omissions of material fact regarding Volkswagen's business practices, financial results and condition and internal controls, which is information that defendants were obligated to disclose during the Class Period but did not.

75. Plaintiff will rely upon the presumption of reliance established by the fraud-on-the-market doctrine in that, among other things:

- (a) defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- (b) the omissions and misrepresentations were material;
- (c) the Company's ADRs traded in an efficient market;
- (d) the misrepresentations alleged would tend to induce a reasonable investor to misjudge the value of the Company's ADRs; and
- (e) plaintiff and other members of the Class purchased Volkswagen ADRs between the time defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the misrepresented or omitted facts.

76. At all relevant times, the market for Volkswagen ADRs was efficient in that the market for these securities promptly digested current information regarding Volkswagen from all publicly available sources and reflected such information in the price of Volkswagen ADRs, for at least the following reasons:

- (a) Volkswagen ADRs satisfy the requirements for listing, and are listed and actively traded in the U.S. over-the-counter, a highly efficient market;
- (b) Volkswagen, a regulated issuer, filed periodic public reports with SEC;
- (c) Volkswagen regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the major newswire services and through other wide-ranging public disclosures, such as communications with the financial press, securities analysts and other similar reporting services; and
- (d) Volkswagen was followed by securities analysts employed by brokerage firms who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

CLASS ACTION ALLEGATIONS

77. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a Class

consisting of all those who purchased or otherwise acquired Volkswagen ordinary and preferred ADRs between November 19, 2010 and September 21, 2015, inclusive (the “Class Period”), and who were damaged thereby. Excluded from the Class are defendants and their families, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

78. Members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members can only be determined by appropriate discovery, plaintiff believes that Class members number at least in the hundreds or thousands and that they are geographically dispersed. As of September 30, 2015, the Company had over 2 million ADRs outstanding, and millions of such ADRs were traded publicly during the Class Period.

79. Plaintiff’s claims are typical of the claims of the members of the Class because plaintiff and all of the Class members sustained damages arising out of defendants' wrongful conduct complained of herein.

80. Plaintiff will fairly and adequately protect the interests of the Class members and has retained counsel experienced and competent in class actions and securities litigation. Plaintiff has no interests that are contrary to or in conflict with the members of the Class plaintiff seeks to represent.

81. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it impossible for the members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of

this action as a class action.

82. Questions of law and fact common to the members of the Class predominate over any questions that may affect only individual members in that defendants have acted on grounds generally applicable to the entire Class. Among the questions of law and fact common to the Class are:

- (a) whether defendants violated the federal securities laws as alleged herein;
- (b) whether defendants' publicly disseminated press releases and statements during the Class Period omitted and/or misrepresented material facts;
- (c) whether defendants failed to convey material facts or to correct material facts previously disseminated;
- (d) whether defendants acted willfully, with knowledge or severe recklessness in omitting and/or misrepresenting material facts;
- (e) whether the market prices of Volkswagen ADRs during the Class Period were artificially inflated due to the material nondisclosures and/or misrepresentations complained of herein;
- (f) whether the members of the Class have sustained damages as a result of the decline in value of Volkswagen ADRs when the truth was revealed and the artificial inflation came out of the ADRs' prices; and
- (g) to what extent the members of the Class have sustained damages and the proper measure of damages.

83. Plaintiff makes the allegations herein based upon the investigation of plaintiff's counsel, which included a review of regulatory filings made by Volkswagen with the SEC, as well as other regulatory filings and reports, securities analysts' reports and advisories about the Company, press releases and other public statements issued by the Company and media reports about the Company. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

CAUSES OF ACTION

COUNT I

For Violation of §10(b) of the Exchange Act and Rule 10b-5 Against All Defendants

84. Plaintiff incorporates ¶¶1-83 by reference as though fully set forth herein.

85. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

86. Defendants violated §10(b) of the Exchange Act and Rule 10b-5 in that they:

(a) employed devices, schemes and artifices to defraud;

(b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Volkswagen ADRs during the Class Period.

87. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Volkswagen ADRs.

88. Plaintiff and the Class would not have purchased Volkswagen ADRs at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements and scheme to defraud.

COUNT II

For Violation of §20(a) of the Exchange Act Against All Defendants

89. Plaintiff incorporates ¶¶1-88 by reference as though fully set forth herein.

90. The Individual Defendants acted as controlling persons of Volkswagen, Volkswagen America and Audi within the meaning of §20(a) of the Exchange Act. By reason of their positions with the Company and their ownership of Volkswagen securities, the Individual Defendants had the power and authority to cause Volkswagen, Volkswagen America and Audi to engage in the wrongful conduct complained of herein.

91. Volkswagen, Volkswagen America and Audi controlled the Individual Defendants and all of their employees. By reason of such conduct, defendants are liable pursuant to §20(a) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

A. Declaring that this action may properly be certified as a class action under Fed. R. Civ. Pro. 23, designating plaintiff as Lead Plaintiff and representative of the Class, and appointing plaintiff's counsel as Lead Counsel;

B. Awarding plaintiff and the members of the Class damages in an amount to be proven at trial, including any applicable interest;

C. Awarding plaintiffs reasonable costs and attorneys' fees; and

D. Awarding such equitable and/or injunctive or other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated this 25th day of November, 2015

Respectfully submitted,

/s/ W. Gordon Ball
W. GORDON BALL
Gordon Ball PLLC
Bank of America Center, Ste. 600
550 Main Street
Knoxville, TN 37902
Telephone: (865) 525-7028
Email: gball@gordonball.com

James G. Stranch, III
BRANSTETTER, STRANCH
& JENNINGS, PLLC
The Freedom Center
223 Rosa Parks Ave., Suite 200
Nashville, TN 37201-1631
Phone: (615) 254-8801
Fax: (615) 255-5419
Email: jims@bsjfirm.com

Attorneys for Plaintiff